

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 07-15-67643
HUD# 07-15-0509-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

HICKORY POINTE, LLC
P.O. Box 198
North Liberty, Iowa 52317-0198

LARSON BUILDERS
2626 Newport Road
Iowa City, Iowa 52240-7852

DESIGN ELEMENTS, LLC
4527 580th Street SE
Lone Tree, Iowa 52755-9310

NEUMANN MONSON, INC.
221 East College Street, Suite 303
Iowa City, Iowa 52240-1759

COMPLAINANT

ANGELA JACKSON (formerly WILLIAMS)
Commissioner, Iowa Civil Rights Commission
400 East 14th Street
Des Moines, Iowa 50319

and

IOWA CIVIL RIGHTS COMMISSION
400 East 14th Street
Des Moines, Iowa 50319

Complainant's Allegations:

Complainant is a member of the Iowa Civil Rights Commission (ICRC). As a member, Complainant has the authority to file a complaint alleging a discriminatory practice in violation of the "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216.

Complainant alleged Respondents designed and constructed covered multifamily dwelling units in violation of the design and construction accessibility requirements of the Iowa Civil Rights Act (ICRA) and the federal Fair Housing Act (FHA). Complainant alleged Respondents violated the "light, switches, thermostats, electrical outlets in accessible locations" and the "usable kitchens and bathrooms" requirements of the ICRA and FHA.¹

Complainant specifically alleged, in Units 801, 805, and 827, 801-831 N. 1st Avenue, Hickory Point Condominiums [henceforth referred to as "Hickory"], (1) the height of the thermostat controls was 51 inches, which is higher than the maximum 48 inches allowed; (2) the height to the midline of the lower electrical outlet adjacent to the kitchen area was 14 inches, which is less than the minimum 15-inch height allowed; and (3) the distance from the midline of the bathroom sink to the adjoining wall was 19 inches, which is less than the 24-inch minimum required for an accessible parallel approach necessitated by the cabinet under the bathroom sink that did not appear to be easily removable.

Description of the Subject Property

Hickory has one building with two floors and eight dwelling units per floor. The building has an elevator, which means each of the 16 units is "covered"² by the design and construction provisions of the ICRA and FHA.³ The building was issued a Certificate of Occupancy on October 14, 2014, signed by Douglas Boothroy, Director of Neighborhood and Development Services for the City of Iowa City, Iowa.⁴

The scope of this agreement covers all 16 units as well as the public and common use areas at Hickory. By April 26, 2016, five of the units [801, 817, 823, 827, and 829] had been sold and two other units [821 and 803] were in the process of being sold,⁵ leaving nine unsold and vacant units.

¹ Iowa Code §§216.8A(3)(c)(3)(c)(ii), and 216.8A(3)(c)(3)(c)(iv); 24 C.F.R. §§100.205(c)(3)(ii), and 100.205(c)(3)(iv).

²"Covered multifamily dwellings" or "covered multifamily dwellings subject to the Fair Housing Amendments" means buildings consisting of four or more dwelling units if such buildings have one or more elevators; and ground floor dwelling units in other buildings consisting of four or more dwelling units." Fair Housing Accessibility Guidelines, Federal Register, Vol. 56, No. 44, Wednesday, March 6, 1991, Rules and Regulations, page 9500.

³42 U.S.C. §3604(f)(7); Iowa Code §§216.2(4)(a), 216.2(4)(b).

⁴http://www.iowa-city.org/tm_bin/tmw_cmd.pl?tmw_cmd=StatusViewCase&shl_caseno=SPD13-00034 (Last visited on Nov. 18, 2015).

⁵This information was provided by Respondent Representative Joseph Moreland.

The construction of all 16 units at Hickory was based on eight different floorplans,⁶ with two units per floorplan. These floorplans have been sorted by ICRC Investigators into three separate groups due to their layout similarities based on the blueprint sketches obtained online and submitted by Respondents.⁷

The table below shows the three groups of floorplans, the total number of covered units per group, and the inspected unit numbers.

GROUP NUMBER	TOTAL COVERED UNITS PER GROUP	INSPECTED UNIT NUMBERS
1 – Floorplans 1 and 2	4	801 [Floorplan 2]
2 – Floorplan 3	2	821 [Floorplan 3]
3 –Floorplans 4-8	10	811 [Floorplan 5] 827 [Floorplan 8]
TOTAL	16	4

Respondents’ Defenses:

When asked in the questionnaire what was true or false about the allegations, Respondent Larson Builders answered:

I’m not saying any of this is true or any of it is false. Those items were under the direction and review/inspection of the companies that performed those tasks and the people that inspected it.

Respondent Design Elements, LLC answered:

I was not involved with companies hired to perform job. Nor have I visited site prior, during, or after construction.

I was not involved with cabinet design, electrical layout or hvac. They would have been hired by general contractor. Those hired companies performed the job and that would have been inspected by city inspector. So I do not know what is true or false regarding the complaint.

Respondent Hickory Pointe, LLC answered:

We believe that the building, as constructed, complies with all accessibility requirements.

Respondent Neumann Monson Inc. answered:

⁶ The floorplans are labeled in the blueprints as “Unit 1,” “Unit 2,” and so on. For clarity and simplicity, each “Unit [number]” will be referred to in the agreement as “Floorplan [number].”

⁷ See Appendix B for floorplans.

Drawing G-001 states that all units are to be [ANSI] Type B units as described in 1107-.6.2.1.2 of the 2009 IBC. Drawings A-102 and A-103 indicates stoves shall not be located at the end of the kitchens. [Neither] I, nor anyone from this office, have inspected the finished project.

Report of Preliminary Findings:

ICRC Investigators inspected four units at Hickory, as well as the public and common use areas in and surrounding the complex. After conducting an onsite inspection of the units listed in the table above and the public/common use areas, ICRC Investigators found and reported the following deficiencies:

- 1) The mailbox kiosk for Hickory is adjacent to the west of the entrance for the underground parking garage. With an elevator serving both floors, all 16 of the mailboxes for the units and the outgoing mail slot must be usable with heights at or below the required 46-inch maximum height above the parking lot surface due to the 24-inch horizontal distance of the obstruction created by the 5 1/2-inch high curb.⁸ The measured heights for the keyholes in the top six rows of mailboxes are reported in the table below.⁹

UNIT NUMBERS	HEIGHT ABOVE PARKING LOT SURFACE
801 and 817	63 1/2 inches
803 and 819	59 5/8 inches
805 and 821	56 inches
807 and 823	52 3/4 inches
Outgoing Mail Slot [For all units]	50 1/2 inches
809	47 1/2 inches

The top six rows of mailboxes are unusable for someone in a wheelchair because they exceed the 46-inch maximum height allowed by the reach parameters of ANSI 1986 when reaching over the 24-inch horizontal distance created by the curb.¹⁰

- 2) Six slope measurements were taken at the approximate center lines of each of the two parking spaces and access aisles reserved for persons with disabilities. They were all found to be greater than 2% as reported in the table at the top of the next page.

⁸ See Appendix A, Figures 1A, 1B, and 1C.

⁹ *Id.*

¹⁰ See Appendix A, Figure 1E

SLOPE MEASUREMENT LOCATION	SLOPE VALUE
North-South Midline of Northern Accessible Parking Space ¹¹	5.0%
East-West Midline of Northern Accessible Parking Space ¹²	3.5%
North-South Midline of Southern Accessible Parking Space ¹³	7.3%
East-West Midline of Southern Accessible Parking Space ¹⁴	5.2%
North-South Midline of Access Aisle ¹⁵	5.7%
East-West Midline of Access Aisle ¹⁶	4.9%

Based on the information gathered, each of the slopes at the inspected sections of the parking spaces and access aisles exceeds the maximum slope values established by ANSI and ADAAG.

- 3) The sidewalk section, which is on the route from the access aisle to the main entrance at the west side of the building, includes two changes in level with height values of 3/4 inch and 1 inch.¹⁷

The measured heights exceed the 1/4-inch maximum height with no beveling allowed by ANSI, making this section of the sidewalk inaccessible to persons with mobility impairments.

- 4) The distance from the edge of the adjacent sidewalk section north of the security intercom, which is at the west-facing door, to the spot directly below the midline of the security intercom keypad is 24 inches. The surface along the measured distance is not “stable, firm, and slip resistant,” as required by Section 302.1 of the ADAAG, because it consists of compost wood chips.¹⁸ Therefore, the security intercom station is not accessible to a person using a wheelchair.
- 5) The path from the interior landing area at the main entrance to the ground-floor units or the elevator requires persons with mobility impairments to either climb or descend nine steps.¹⁹

The only other possible path for a resident or guest using a wheelchair for mobility is to travel north from the access aisle along the sidewalk on the west side of the building to the north-facing door, which does not have a security intercom. This

¹¹ See Appendix A, Figures 2A and 2B.

¹² See Appendix A, Figures 2C and 2D.

¹³ See Appendix A, Figures 2E and 2F.

¹⁴ See Appendix A, Figures 2G and 2H.

¹⁵ See Appendix A, Figures 2I and 2J.

¹⁶ See Appendix A, Figures 2K and 2L.

¹⁷ See Appendix A, Figures 3A, 3B, and 3C.

¹⁸ See Appendix A, Figures 4A and 4 B.

¹⁹ See Appendix A, Figures 5A and 5B.

results in a 156-foot path that is significantly longer than the 18-foot path that persons without mobility impairments are able to travel.²⁰

Further, this alternate path includes slopes greater than the maximum allowed by the Guidelines and ANSI. To facilitate the precise report of the locations where slope measurements were taken, the sidewalk square sections along this path were numbered starting with “1” at the sidewalk square adjacent to the north-facing door. The sidewalk sections were measured out to be five feet by five feet. Only the slope measurements exceeding the allowed maximum values – 2% for cross slopes [CS] and 5% for running slope [RS] – and the location for these measurements are reported in the table below.

SIDEWALK SQUARE	SLOPE
8 th 21	RS = 5.6%
19 th 22	CS = 4.1%
20 th 23	CS = 4.2%
21 st 24	CS = 4.0%
29 th 25	CS = 2.4%
30 th 26	CS = 2.5%
31 st 27	RS = 11.8%

Consequently, there is no accessible path from the two parking spaces designated as reserved for persons with disabilities into the dwelling units, as required in the Guidelines and ANSI.

- 6) The height of the thermostat control buttons used in adjusting the temperature was measured at no less than 54 inches for all inspected units.²⁸ The measured height for these control buttons is higher than the 48-inch maximum reach limit allowed by the Guidelines, making the buttons unusable by a resident in a wheelchair.
- 7) The height of the bottom electrical outlets in each living room, dining room, and bedroom for all inspected units was measured at 14 inches.²⁹ The heights measured render these electrical outlets unusable by residents who utilize a wheelchair.
- 8) As based on Respondent Hickory Pointe’s answers, the bottom edge of the reinforcement areas for toilets, bathtubs, and showers exceeds the maximum allowed height of 32 inches. Also, the toilets are missing the required reinforcement to the

²⁰ See Appendix A, Figures 5C and 5D.

²¹ See Appendix A, Figures 5E and 5F.

²² See Appendix A, Figure 5G.

²³ See Appendix A, Figures 5H and 5I.

²⁴ See Appendix A, Figures 5J and 5K.

²⁵ See Appendix A, Figures 5L and 5M.

²⁶ See Appendix A, Figures 5N and 5O.

²⁷ See Appendix A, Figures 5P and 5Q.

²⁸ See Appendix A, Figures 6A and 6B.

²⁹ See Appendix A, Figure 6C.

rear, as required in the FHADM. Finally, based on Hickory Pointe's responses, the vertical edges of the reinforcement areas in the bathtubs are too far away from the closest walls.

- 9) The turning space diameter measurements gathered during the inspection range from 48 3/4 inches to 58 3/4 inches.³⁰ A circular drop cloth with a 60-inch diameter was used to verify compliance. As may be observed in the inspection photographs in Appendix A – containing Figures 6F, 6G, and 6H – the stove handle extended significantly into the circular area of drop cloth. None of the kitchens have the required 60-inch turning diameter to allow sufficient maneuverability space, which renders these kitchens unusable to residents using a wheelchair for mobility.
- 10) The distance from the midline of the sink to the nearest obstruction was measured in the bathrooms of the inspected units. The Specification B bathroom in Unit 827, which is a "Unit 8" type, has two sinks. The midline of the left sink is 16 1/8 inches from the adjoining wall and the midline of the right sink is 15 3/4 inches from the adjoining wall. Although only one of the two sinks is required to be accessible, neither sink is currently accessible if the cabinets are not removable.

Respondents maintain all bathrooms have removable cabinets. In order to confirm the vanity cabinets in the Specification B bathroom in Unit 827 are indeed removable, ICRC required Respondents to complete the steps required in the Report of Preliminary Findings at one of the unsold and unoccupied units.

Respondents' Response to Report of Preliminary Findings:

Respondents submitted the following responses to the reported deficiencies:

- 1) Respondents will lower the mailbox kiosk and move the kiosk adjacent to one of the sidewalks, so as to meet the maximum reachable-height requirement of 54 inches and the required clear floor space of 30 by 48 inches.
- 2) In order to provide an accessible route from the exterior parking lot into the building, Respondents will make the following retrofits:
 - a. Respondents will restripe the exterior parking lot, so as to relocate the parking spaces designated as reserved for persons with disabilities and the access aisle from near the west-facing main entrance to the northeastern end of the parking lot adjacent to the common-use gas-grill area.³¹
 - b. Respondents will install an accessible curb ramp at the curb portion adjacent to the west of the new location of the parking spaces reserved for persons with disabilities, which is at the northeastern corner of the exterior parking lot.

³⁰ See Appendix A, Figures 6D and 6E.

³¹ See Appendix C, Figure 4.

- c. Respondents will redo the noncompliant sidewalk sections along the path from the new curb ramp adjacent to the common-use gas grill to near the north-facing door.
 - d. Respondents will build an extension of the existing sidewalk from near the north-facing building door to the east-facing door.
- 3) Respondents will move the thermostats to a height of 48 inches or less, or replace them with wireless remote thermostats.
 - 4) Respondents will install 3-outlet adapters at top electrical outlet.
 - 5) After further verification, Respondents amended their response about the location and technical dimensions for the grab-bar reinforcements, which supported their claim of being compliant with Requirement 6 of the FHA and ICRA.
 - 6) Respondents will include a notice in all future advertising for the unsold units, and also notify all current owners of the condo dwelling units about the option to replace the stove/range appliance in the U-shape kitchens with a cooktop that has a removable base cabinet and the required knee space and a countertop oven.
 - 7) Respondents submitted photographs and written documentation about the removability of vanity cabinets at Hickory in support of their claim that all bathroom sinks at Hickory are removable and, therefore, in compliance with the accessible design and construction requirements of the FHA and ICRA.

Assessment of Deficiencies:

Respondents stated all units were built in accordance with the requirements of the 2009 International Building Code [IBC 2009], which is not one of the safe harbors accepted by HUD.³² Therefore, the FHADM must be used to assess and determine compliance with the ICRA and FHA.

Following is the assessment of the reported deficiencies, based on the scoping and technical requirements of FHADM and the technical requirements of ANSI 1986:

- 1) ICRC concurs with Respondents' proposal to lower the mailbox kiosk and move the kiosk adjacent to one of the sidewalks so as to create the required clear floor space.
- 2) ICRC concurs with Respondents' proposal to (1) restripe the exterior parking lot; (2) install an accessible curb ramp; (3) redo the sidewalk sections from near the common-use gas grill to near the north-facing building door; and (4) build an extension of the sidewalk from near the north facing door to the east-facing door, so as to create an accessible route from the exterior parking lot into the building.

³² <http://www.fairhousingfirst.org/faq/safeharbors.html> (Last visited on March 28, 2014).

However, ICRC will also require Respondents to verify the running and cross slopes, and changes in level for the sidewalk section with handrails that is adjacent to the east-facing entrance, meets the requirements from Sections 303 and 403.3 of the 2010 ADAAG. If this sidewalk section is found to be non-compliant, ICRC will require for the sidewalk to be redone to meet the above-referenced requirements from ADAAG.

Additionally, ICRC will require that signage be added to guide persons with mobility impairments to the accessible entrance at the east-facing door, to meet the requirements of Sections 216.6 and 703.5 of the 2010 ADAAG.³³ Although Section 216.6 of the ADAAG only requires a sign at the non-accessible entrance, ICRC will require two additional signs to better guide persons with mobility impairments to the accessible entrance at the east-facing door to Hickory.

- 3) ICRC concurs with Respondents' proposal to move the thermostats to a height of 48 inches or less, or replace them with wireless remote thermostats.
- 4) ICRC does not concur with Respondents' proposal to install 3-outlet adapters to increase the height of the outlets. ICRC has recently learned that the use of multiplug adapters as a part of a permanent wiring system is unsafe and violates a section of the National Fire Protection Association (NFPA) Code. The relevant section from this code reads:

11.1.5 Multiplug Adapters.

11.1.5.1 Multiplug adapters, such as multiplug extension cords, cube adapters, strip plugs, and other devices, shall be listed and used in accordance with their listing.

11.1.5.2 Multiplug adapters shall not be used as a substitute for permanent wiring or receptacles.³⁴

Additionally, ICRC consulted with a building official in Iowa, who is also a member of the Board of Directors for the Iowa Association of Building Officials (IABO), about the use of multiplug adapters. The information gathered from this building official indicates the multiplug adapters do not satisfy any of the requirements from the National Electrical Code, which is drafted by the NFPA.³⁵

Although the electrical outlets noted earlier in this agreement and in the report are non-compliant because the bottom outlet is one inch below 15-inch minimum height required by the Guidelines, ICRC will not require Respondents to move the non-compliant outlets because the top outlet is above the 15-inch minimum height

³³ <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards-single-file?highlight=WzIwMTBd> (Last visited on May 6, 2016).

³⁴ <http://codesonline.nfpa.org/a/c.ref/ID00001123474/sec> (Last visited on April 8, 2016).

³⁵ <https://compcolts.wikispaces.com/file/view/2011+Code+Book.pdf> (Last visited on April 8, 2016).

and the bottom outlet is no more than one inch below the minimum height. However, as these electrical outlets continue to be non-compliant, Respondents are hereby advised that the current agreement does not prevent possible future enforcement actions by either the United States Department of Housing and Urban Development (HUD) or the United States Department of Justice (DOJ).

- 5) ICRC acknowledges Respondents' amended responses about the grab-bar reinforcement areas. If the grab-bar reinforcement areas were installed as indicated in Respondents' amended responses and as presented in their blueprints, they meet the reinforcement requirements for grab-bar installation by the FHA and ICRA for later grab-bar installation. No further action is required by Respondents to demonstrate compliance for this requirement.
- 6) ICRC concurs with Respondents' proposal to include a note in all future advertising about the option to retrofit the kitchen by relocating the range, to make the kitchen compliant with usability requirements. However, ICRC will require Respondents to send a letter to *both* the current owners of the sold units and future purchasers of the unsold units, which directly communicates (i) the specific nature of the usable-kitchen deficiency; (ii) the available retrofit of moving the existing range from the current location at the bottom of the U-shape kitchen configuration to the opposing side from the kitchen sink at no cost to the owner or purchaser; and (iii) the possible negative impact of not doing the retrofit on the owner/purchaser's ability to resell their unit.
- 7) ICRC acknowledges the bathroom's vanity cabinets are removable based on the photographs and written description submitted by Respondents, and as defined by the FHADM. Therefore, the bathroom vanity cabinets in the dual-sink bathroom for Unit 827 are determined to be compliant with the maneuverability requirements of the FHADM. No additional action is required from Respondents in regards to this requirement.

Predetermination Settlement Agreement

A complaint having been filed by Complainant against Respondents with ICRC under Iowa Code Chapter 216 and there having been a preliminary inquiry, including an on-site inspection of Hickory, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the "Iowa Civil Rights Act of 1965" (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).

2. Respondents acknowledge the ICRA makes it unlawful to discriminate in the terms, conditions or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of race, color, creed, sex, sexual orientation, gender identity, national origin, religion, disability, or familial status. Iowa Code § 216.8(1)(b).
3. Respondents acknowledge the ICRA makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code § 216.8(1)(a).

Respondents acknowledge the Fair Housing Act (FHA) makes it unlawful to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin. 42 U.S.C. 3604(f)(1)(a) (§ 804(f)(1) of the Fair Housing Act).

4. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling and to the extent that the accommodation does not cause undue financial or administrative burden or fundamentally alter the nature of the provider's operations. 42 U.S.C. 3604(f)(3)(b) (§ 804(f)(3)(b) of the Fair Housing Act); Iowa Code § 216.8A(3)(c)(2).
5. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2)(a) (§ 804(f)(2)(a) of the Fair Housing Act); Iowa Code § 216.8A(3)(b)(1).
6. Respondents acknowledge as owners, developers, builders, or managers of covered multifamily dwellings – ground-floor units in a building consisting of four or more dwelling units built for first occupancy after January 1, 1992 – must build those dwellings in compliance with specific design and construction accessibility requirements, in accordance with the FHA and ICRA. Iowa Code §216. 8A(3)(c)(3); 42 U.S.C. §3604(f)(3)(C).

HUD has described these accessibility requirements via regulation and in several publications, including the “Final Fair Housing Accessibility Guidelines.” 24 *C.F.R. Part 100.200 et seq.*; 56 *Fed. Reg.* 9,472. In the “Guidelines,” HUD presented the seven specific requirements as:

1. Accessible building entrance on an accessible route.
2. Accessible and usable public and common areas.

3. Usable doors.
4. Accessible route into and through the covered dwelling unit.
5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
6. Reinforced walls for grab bars.
7. Usable kitchens and bathrooms.

Voluntary and Full Settlement

7. The parties acknowledge this Predetermination Settlement Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.
9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
10. Respondents agree ICRC may review compliance with this Agreement. And as part of such review, Respondents agree ICRC may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by ICRC.

Disclosure

11. Because, pursuant to Iowa Code §216.15A(2)(d), ICRC has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

12. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with ICRC, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban

Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing / Accessible Design and Construction Training

13. Respondents agree Casey Boyd will:

- (a) Receive training on the accessible design and construction requirements of State and Federal Fair Housing Laws within 180 days of their receipt of a Closing Letter from ICRC. The training will address the Fair Housing accessibility requirements that must be met in order to design and build covered dwellings and common use/public areas that are accessible and usable to individuals with mobility and visual impairments.

Attendance at Design and Construction training session offered during the 4th Annual “Be The Change” ICRC Symposium – to be held on October 28, 2016 – will fulfill the requirement for this term. Otherwise, the training shall be conducted by a qualified person, approved by ICRC or the U.S. Department of Housing and Urban Development.

Respondents also agree to send documentation to ICRC, verifying the fair housing / accessible design and construction training has been completed, within ten (10) days of completing the training.

14. Respondents agree Jason Starr, Casey Boyd, Parker Dobberstein, and Christina Magruder will:

- (a) Review and become familiar with the Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 (1991) and the United States Department of Housing and Urban Development, Fair Housing Act Design Manual, A Manual to Assist Builders in Meeting the Accessibility Requirements of the Fair Housing Act, (August 1996, Rev. April 1998), which may be obtained online at <http://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

Required Modifications or Retrofits

15. Respondents agree to make the following modifications or retrofits to Hickory:

Accessible and Usable Public and Common Use Areas – Mailboxes

- (a) The parties agree the top six rows of mailboxes are unusable for someone in a wheelchair because they exceed the 46-inch maximum height allowed by the reach parameters of ANSI 1986 when reaching over the 24-inch horizontal distance created by the curb.
- (b) Respondents agree they will lower mailboxes and move the mailbox kiosk to a location adjacent to one of the accessible sidewalk routes to provide residents

with mailbox keyholes that do not exceed the maximum reach-range height of 54 inches without obstructions, as required by FHADM and ANSI.

Accessible and Usable Public and Common Use Areas – Accessible Route from Exterior Parking Lot to Building Entrance

- (a) The parties agree the route from exterior parking lot to the west-facing main entrance of Hickory is not accessible because the following features do not meet the technical requirements of ADAAG and ANSI:
- i. The parking spaces designated as reserved for persons with disabilities have slopes that exceed the 2% maximum in all directions.
 - ii. The sidewalk adjacent to the west-facing entrance has changes in level exceeding 1/4-inch.
 - iii. The security intercom station at the west-facing door does not have the required 30-inch by 48-inch clear floor space centered in front of the station with a surface that is “stable, firm, and slip resistant.”
 - iv. The path from the main entrance to the ground-floor units or the elevator includes steps.
 - v. The alternate sidewalk-path to the east-facing door currently includes sections where the cross slope exceeds 2% or the running slope exceeds 5%.
- (b) Respondents agree they will create an accessible route from the exterior parking lot into Hickory by making the following retrofits:
- i. Restripe the exterior parking lot such as to create two parking spaces separated by an access aisle at the northeastern corner of the parking lot with technical dimensions and identification that meet the requirements from Section 502 of the 2010 ADAAG, which can be accessed online at: <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards-single-file?highlight=WzIwMTBd>
 - ii. Create a curb ramp adjacent to the west of the newly created parking spaces designated as reserved for person with disabilities, that meets the requirements of Section 406 of the 2010 ADAAG, which can be accessed online at the hyperlink in “i” paragraph above, and consistent with Figure 4 in Appendix C for the current agreement.³⁶
 - iii. Redo non-compliant sections of the sidewalk path from the northeastern corner of the exterior parking lot to the north-facing door, as reported on page 6 of the current agreement, so as to meet the requirements from Sections 303 and 403.3 of the 2010 ADAAG, which can be accessed online at the hyperlink in “i” paragraph above.
 - iv. Extend the sidewalk from near the north-facing door by building a new sidewalk section from near the north-facing door to the east-facing door

³⁶ See Appendix C, Figure 4.

of Hickory, along the shortest possible route, and consistent with Figure 1 in Appendix C of the current agreement, so as to meet the requirements from Sections 303 and 403.3 of the 2010 ADAAG, which can be accessed online at the hyperlink in “i” paragraph above.

- v. Verify the running slope is no greater than 8.33% and cross slope is no greater than 2% for the sidewalk section with handrails – which must meet the technical requirements for handrails from Section 505 of the 2010 ADAAG – adjacent to the east of the east-facing door, so as to meet the requirements from Section 403.6 of the 2010 ADAAG – both ADAAG sections can be accessed online at the hyperlink in “i” paragraph above.

If the running and cross slopes exceed the maximum values previously stated, Respondents agree to re-install this sidewalk section and handrails to meet the slope requirements set forth in the current subparagraph.

- vi. Build a sidewalk section centered underneath the security intercom station at the east-facing door that is large enough for a 30 by 48-inch clear floor space surface area, so as to meet the requirements from Sections 303 and 403.3 of the 2010 ADAAG, which can be accessed online at the hyperlink in “i” paragraph above.

- (c) Respondents agree to permanently install three metal posts, each with a directional sign, which shall read “ACCESS AT EAST SIDE OF BUILDING,” with the signs located adjacent to (1) the south of the west-facing entrance; (2) the east of the new accessible curb ramp; and (3) to the east of the north-facing door to Hickory – so as to meet the requirements from Sections 216.6 and 703.5 of the 2010 ADAAG.

Respondents agree to install the new signs at the locations indicated in Appendix C, Figure 1, and consistent with the appearance – including the Universal Access logo – indicated in Appendix C, Figure 2.

Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations - Thermostats

- (a) The parties agree the height of the thermostat controls in all inspected units exceed the maximum height of 48 inches, as allowed by FHADM.
- (b) Respondents agree they will either lower the thermostat controls in all unoccupied units at Hickory to a height no greater than 48 inches, as required by FHADM, or replace the existing thermostats with wireless remote-control thermostats.

Usable Kitchens – Turning Space at Range

- (a) The parties agree the U-shape kitchen in all inspected units has insufficient clear floor space because the turning space diameter in front of the range is less than

the 60-inch minimum that is required by the FHADM when either this appliance or a sink is located at the bottom of the U-shape kitchen.

- (b) Respondents agree all future advertising in pamphlets, brochures, signs, and other promotional literature will clearly communicate the available option for a free kitchen upgrade to make it usable for persons who use a wheelchair.

Respondents agree the promotional literature – pamphlets, brochures, or otherwise – will be readily available to potential buyers in any units available for sale.

- (c) Respondents agree to submit a letter to both the current owners of the sold units [801, 803, 817, 821, 827 and 829], and the purchasers of the unsold units [805, 807, 809, 811, 813, 815, 819, and 825] detailing the following points:
- i. The kitchen is not usable by persons using a wheelchair for mobility because the distance between opposing counters adjacent to the front of the range is significantly less than the 60-inch minimum that is required for U-shape kitchens with a range at the bottom of the U as per Requirement 7 [“Usable Kitchens and Bathrooms”] from the ICRA and FHA.
 - ii. Within 30 days from the date of a written request by the current owner of a sold unit or the purchaser of an unsold unit, Respondents will move the range from its current location at the bottom of the U to a location opposite from the kitchen sink, so as to make the kitchen usable by persons using a wheelchair for mobility.
 - iii. The retrofit offered on “ii” paragraph above will be done at no cost to the owner of the sold unit or purchaser of the unsold unit.
 - iv. The retrofit offered on “ii” paragraph above will be completed in compliance with the applicable requirements from the edition of International Builder Code currently adopted by the City of Iowa City at the time the retrofit is done.
 - v. Although the owner of the sold unit or purchaser of the unsold unit is not required by ICRC to have the retrofit completed, allowing the kitchen to remain unusable for persons using a wheelchair for mobility may negatively impact the ability to resell the unit due to either liability concerns from the non-compliance with accessibility requirements *or* concerns by potential buyers who either use a wheelchair for mobility or have someone in their household who does, and find the kitchen is unusable.
 - vi. Current owners of sold units and purchasers of unsold units who have questions or concerns about accessibility and/or usability requirements are directed to contact ICRC’s Design and Construction Specialist Emigdio López-Sanders by phone at 515-281-8046, or via email at emigdio.lopez-sanders@iowa.gov.
- (d) Respondents agree to send the letter referred to in “c” paragraph above within 30 days of receiving a Closing Letter from ICRC for the units already sold or

occupied; or within 30 days from the date of a signed “RESIDENTIAL REAL ESTATE PURCHASE AGREEMENT” for the unsold units.

Required Timelines for Completion of Modifications or Retrofits

16. Respondents agree that the above-required modifications or retrofits to the public and common use areas of the subject property – mailbox kiosk, exterior parking lot, and sidewalks – within 90 days from the date of the Closing Letter from ICRC.³⁷
17. Respondents agree to notify each of the current owners of already sold and occupied units in writing within 30 days of receiving a Closing Letter from ICRC that upon request they will make the above-described thermostat retrofit at no cost to the current owners. When an owner requests it, Respondents shall make the thermostat retrofit within 30 days of the owner’s request.
18. When an owner requests either a thermostat or range retrofit, Respondents agree they will allow these residents to remain in their units while the renovations are being completed, so long as their continued stay is safe and does not unduly disrupt the renovation work. If their continued stay is not safe or unduly interferes with renovation work, Respondents agree to move the affected residents to another suitable unit on a temporary basis, until the unit is made safe or the renovation work is completed. Respondents agree to pay all costs generated by such moves.
19. Respondents agree to make the above-required thermostat retrofit at each of the unoccupied units at Hickory within 60 days of receiving a Closing Letter from ICRC or before the unit’s sale-closing date, whichever occurs first.
20. Respondents acknowledge that if the current owners of the sold units choose not to request the thermostat or range retrofits, then those units will continue to be non-compliant and subject to possible future enforcement actions by either the United States Department of Housing and Urban Development (HUD) or the United States Department of Justice (DOJ).

Mandatory Reporting Requirements

21. Respondents agree to notify ICRC when they have completed the required modifications or retrofits for all of the unsold subject units and the public and common use areas. Such notification shall be made within 90 days of completion. These required notifications to ICRC will continue until all required modifications or retrofits have been completed in all nine unsold units and the public and common use areas.

³⁷ The “Closing Letter” provides notice to the parties that the case has been closed. Once this agreement is fully executed, the Commission will issue its Closing Letter. It will be mailed to all parties and their representatives. A fully executed copy of the agreement will accompany the Closing Letter.

22. Every four months for a period of 12 months following the execution of this Settlement Agreement, Respondents agree to send a copy of the advertisement for Hickory with the previously-stated language to ICRC, within ten days of posting or publishing the advertisement.

23. Respondents agree to submit a copy of the advertising and both letters required above to ICRC for review and approval within 30 days of receiving a Closing Letter from ICRC, and before posting the advertising or sending the letters.

ICRC will review and reply to Respondents about the request for approval within three business days of receiving a copy of the advertising and letters.

24. Respondents agree send a copy to ICRC of all written requests for the above-stated thermostat and kitchen retrofits within ten days of their receipt of the request.

25. If a current owner requests a thermostat or kitchen retrofit for a sold unit or a purchaser requests a kitchen retrofit for an unsold unit, Respondents agree to notify ICRC within ten days of the completion of these retrofits.

26. Respondents agree, as the required modifications or retrofits are made to a particular unit, ICRC may then inspect such unit, and then report the results of its inspection, addressing any outstanding deficiencies, in writing and within 30 days of the inspection, to Respondents.

If the inspection indicates outstanding deficiencies, Respondents shall correct all such deficiencies within a reasonable period of time as determined by ICRC, and shall pay a reasonable fee for another inspection by ICRC staff or pay for an inspection by a third party inspector, approved by ICRC.

27. The sale or transfer of ownership, in whole or in part, by any owner of Hickory will not affect any obligation to modify or retrofit Hickory as specified in this Agreement, unless Respondents have obtained, in writing, as a condition of sale or transfer, the purchaser or transferee's commitment to be bound by the terms of this agreement to complete all required modifications or retrofits as specified in this Agreement.

28. Within 90 days from the date of the Closing Letter from ICRC, Respondents agree to provide a written statement to ICRC, to the attention of Don Grove, Supervisor of Housing Investigations, which specifies how each of the above-required modifications or retrofits will be corrected.

[Please go to next page for the signature page]

Hickory Pointe, LLC
RESPONDENT

Date

Larson Builders
RESPONDENT

Date

Design Elements, LLC
RESPONDENT

Date

Neumann Monson, Inc.
RESPONDENT

Date

Angela Jackson
COMPLAINANT

Date

Kristin H. Johnson, Executive Director
IOWA CIVIL RIGHTS COMMISSION

Date